Chapter 21 Elder Abuse
Section 3

Abstract

The purpose of this training is to provide Victim Service Providers with a better understanding of the scope and nature of elder abuse.

Learning Objectives

By the end of this section, participants will be able to:

- Identify the various types of abuse
- Gain an understanding of the physical and psychological barriers that prevent many older people from reporting abuse
- Identify those who are required to report elder abuse
- Identify types of elder abuse perpetrators
- Learn the physical and psychological effects of normal aging
- Identify physical and psychological impairments and illnesses associated with aging
- Become familiar with the concept of functional capacity and how it is used in assessing the physical and mental needs of the elderly
- Utilize effective communication with older persons

Listing of Topics

- Introduction to Elder Abuse and Neglect
- Aging: An Overview
- The Aging Services Network

INTRODUCTION TO ELDER ABUSE AND NEGLECT

America is an aging society. At the beginning of the 20th century, only one in 25 Americans was over the age of 65. The Census Bureau predicts that 26 states will double their populations of people older than 65 by 2030, when the oldest members of the baby boom generation hit their 80s[1]. This "age wave" will affect every aspect of American life; from the length of time pedestrian crossing lights are set to how we finance health care. New innovations and discoveries are helping Americans live longer, healthier lives. But the aging of America has also created new opportunities for predators, con artists and other criminals who see frail elders as easy prey. Even more disturbing is the fact that many elders are victimized by members of their own families. Growing awareness of elder abuse has resulted in more cases being reported to law enforcement—a trend that is likely to continue.

There is no nationally defined age at which one becomes an elder, but many states set the cut-off at 60 or 65. Elder abuse is mistreatment that results in harm or loss to an older person. It covers a broad spectrum of conduct ranging from deliberate acts of violence to acts of omission such as the failure to provide care. Some are criminal, while others are not. This module describes the various forms of abuse, as well as special issues common to all forms, including consent, capacity and undue influence. It describes the role of law enforcement and other key agencies and can be used as "stand-alone" training for both law enforcement and others who handle abuse cases or as an introduction to a more comprehensive course that includes some or all of the other modules. South Carolina does not recognize the elderly as a protected class in statute. The state uses "vulnerable adult" and this will be addressed later in the lesson.

Why Victims Don't Report

Many cases of abuse go unreported because victims are unable to ask for help, are afraid of retaliation or institutionalization, or are dependent upon their abusers for needed care. Some elderly victims are isolated and have no one to tell.

Health care professionals, social workers, mental health workers and others are required to report suspected elder abuse in South Carolina. Stopping abuse and ensuring victim safety often requires close collaboration and coordination between law enforcement and other professionals. When social workers are denied access to older adults, police may assist by performing "welfare checks"

[1] *U.S. Census Bureau (2002).* State Population Projections. *Retrieved December 8, 2005, from http://www.census.gov/population/www/projections/stproj.html*

on elder abuse. In criminal cases, police may need to call upon social service workers to get information about elderly victims or to make arrangements for the victims' care.

Extent of the Problem[2]

The problem, from a social service perspective, is contained in the results of a national survey on elder abuse conducted by the National Center on Elder Abuse (NCEA). Information presented in the report represents Fiscal Year (FY) 2003 data from Adult Protective Services (APS) in all fifty states, the District of Columbia, and Guam. The report primarily summarizes data concerning reports of abuse for individuals 60 years of age and older. A forthcoming report will discuss abuse of adults of all ages. The National Committee for the Prevention of Elder Abuse (NCPEA) and the National Adult Protective Services Association (NAPSA), partners of the Center, carried out the project. The University of Kentucky conducted the research for NCPEA.

Purpose

The purpose of the *2004 Survey of Adult Protective Services* was to gather the most recent and accurate state-level APS data on elder abuse. The project was a follow-up to the 2000 report, *A Response to the Abuse of Vulnerable Adults: The 2000 Survey of State Adult Protective Services* and provides data, where comparable, to identify trends. **To obtain a copy of the 2000 report, visit the NCEA website at www.elderabusecenter.org. Click on "Statistics, Research and Resources" and go to "National Statistics, 2000 State APS Services Survey Results."**

Findings for Adults Aged 60+

Statewide Reporting Numbers

- APS received a total of 253,426 reports (32 states).
- APS investigated a total of 192,243 reports (29 states).
- APS substantiated 88,455 reports (24 states).
- APS received a total of 84,767 reports of self-neglect (21 states).
- APS investigated a total of 82,007 reports of self-neglect (20 states).
- APS substantiated 46,794 reports of self-neglect (20 states).
- The most common sources of reports of abuse were family members (17.0%), social services workers (10.6%), and friends and neighbors (8.0%).

Categories of Elder Abuse

- Self-neglect was the most common category of investigated reports (49,809

[2] Note: Incidence indicates new abuse occurrence over time. Prevalence provides a snapshot of all abuse cases at a point in time.

reports or 29.4%), followed by caregiver neglect (26.1%) and financial exploitation (18.5%).
- Self-neglect was the most common category of substantiated reports (26,752 reports or 39.3%), followed by caregiver neglect (21.6%) and financial exploitation (13.8%).

Substantiated Reports, Victims

- States reported that 65.7% of elder abuse victims were female (15 states).
- Of the victims aged 60+, 30.9% were 80 years of age and older (20 states).
- The majority of victims were Caucasian (77.1%) (13 states).
- The vast majority (89.3%) of elder abuse reports occurred in domestic settings (13 states).

Substantiated Reports, Alleged Perpetrators

- States reported that 52.7% of alleged perpetrators of abuse were female (11 states).
- Over three-fourths (75.1%) of alleged perpetrators were under the age of 60 (7 states).
- The most common relationships of victims to alleged perpetrators were adult child (32.6%) and other family member (21.5%) (11 states).
- Twenty-one states (40.4%) maintain an abuse registry or database of alleged perpetrators, while 31 (59.6%) do not.

AGING: AN OVERVIEW

Introduction: The "Graying of America"

It has frequently been observed that "America is getting older." This refers to the fact that we are witnessing an unprecedented demographic shift toward an older population.

Between 1989 and 2030, the 65-plus population is expected to double. By 2030, there will be proportionately more elderly than young people in the population: 22 percent of the population will be 65-plus and 21 percent will be under 18. The population age 85-plus is expected to triple during that time. Elderly minority populations will also increase substantially in the next few decades. In 1985, approximately 14 percent of the population 65-plus were persons of color. By 2020, this figure will have reached 21 percent.

This rapid growth has been accompanied by greater attention to the elderly. A new body of information about aging has emerged that dispels previous misconceptions and myths and more accurately defines the elder's needs. This new information and technology is enabling older people to live with greater independence and autonomy. Innovations in the fields of health and medicine enable older people to live longer, healthier lives. Many start second careers, go back to school, travel and contribute to their communities. As a group, the

elderly constitute a formidable political force.

Along with this unprecedented growth and the improvements in the quality of life for many older people, a variety of problems may also be anticipated. Because of the high cost of institutional care and the desire of older persons to remain with their families, the majority of the elderly will live in the family setting. 67% of older, non-institutionalized persons lived with their families in 1990, according to the U.S. Census Bureau. This trend will undoubtedly create greater opportunities for the elderly to become involved in domestic disputes and increase their vulnerability to abuse.

To effectively communicate and offer assistance, police and others working with elderly crime victims need to have a basic understanding about how aging affects older persons' functional ability (their ability to carry out routine tasks). This information is also important to understand because certain disabilities associated with old age leave some older people vulnerable to abuse and impede their ability to protect themselves.

Physiological Changes Related to Aging

Normal Changes in Aging

Old age is not synonymous with disease and disability. Most older people are active and healthy throughout their lives. There are, however, a number of physiological changes that almost everybody who lives to a certain age will experience. These are regarded as normal changes related to age. They include changes in sense perception and musculo-skeletal systems. In addition to these normal changes, the chances of acquiring certain diseases increase with age. Be aware of these changes, but be careful not to assume that all older persons have these impairments or the same levels of impairment.

Sensory Changes

Visual Loss: Visual loss usually begins when an individual is in his or her 40's. As the lenses of the eyes begin clouding, the size of the pupils decreases and light is prevented from entering. Depth and distance perception also deteriorate with age, as the eyes lose their ability to converge images. Failing vision may also be the result of several illnesses or conditions including glaucoma, diabetes, hypertension or lack of oxygen.

Those experiencing visual loss can find it extremely traumatic for those experiencing it. Visual loss can limit mobility, increase the likelihood of accidents, impede recreational activities and lead to fear and isolation. Because vision has been shown to compensate for other sensory losses, the effects of its loss are far-reaching. Adjusting to visual loss requires learning new self-care skills which many elderly fail to accomplish. Most, for example, do not learn how to read Braille.

Hearing: Some hearing loss is common to everyone and it usually begins during the individual's 20's. Changes in hearing experienced by the elderly include:

- Loss of the ability to hear high frequencies. For this reason, it is often easier for the older person to understand a male than a female, as the pitch of men's voices is usually lower than that of women

- Ringing in the ears

- Hypersensitivity to very loud speech that would be acceptable to a younger person

- Loss of the ability to localize where sound is coming from. This makes it difficult for many older people to discriminate among the sounds heard in a noisy environment

Many people who have hearing loss compensate for it by relying more heavily on visual clues such as facial expressions.

Touch and pain: The elderly have reduced tactile sense. As a result, they experience less pain and may be less likely to notice injuries or conditions such as heart attacks. Declines in the sensation of touch may result in a loss of balance and may increase the risk of falls.
Older people are also especially susceptible to the adverse effects of weather including hypothermia (a sometimes fatal drop in internal temperature), heat stroke and heat exhaustion. Conditions that may make older people even more susceptible to temperature extremes are chronic illness, inability to afford enough heat or cooling, inactivity, obesity, alcoholism and use of certain medications. Symptoms of hypothermia include slow, sometimes irregular, heartbeat, slurred speech, shallow, very slow breathing, sluggishness and confusion. Signs of heat stroke or exhaustion include faintness, dizziness, headache, nausea, loss of consciousness, rapid pulse, flushed skin, weakness, heavy sweating and giddiness.

Musculo-Skeletal Changes
Up to the age of 30, people's bone content increases. It remains constant until about the age of 45, after which it falls progressively. While this is true for both men and women, bone content falls more rapidly for women after menopause.

Osteoporosis refers to the reduction of the total amount of bone in the skeleton. It is characterized by loss of height and downward inclination of the head. While it is a natural effect of aging, it becomes "clinical" osteoporosis when the total bone is reduced below a critical level at which fractures are more likely to occur and bones become painful when stressed. Musculo-skeletal changes such as

osteoporosis make it difficult for older people to perform some daily tasks such as reaching up or getting up from a chair or bed. They also make falls more dangerous, which frequently result in broken bones, including hips. Fractures often signal the rapid decline of an older person.

Cognition

Cognition is a composite term that refers to intelligence, ability to learn and memory. While it has been observed that some changes in cognition are a normal function of the aging process, the effects of these changes do not significantly impair social functioning. Significant declines are usually the result of disease. There is evidence to suggest, however, that the speed of cognitive processing declines with age. This means that it may take older people longer to recall or process information.

Diseases and Chronic Conditions of the Elderly

The elderly are more susceptible to certain acute and chronic illnesses than other segments of the population. Chronic conditions are long-term (more than three months), are often permanent and leave a residual disability that may require long-term management or care. Some are acquired earlier in life and are never cured, while others are more likely to be acquired in advanced age.

The most common chronic conditions that cause limited activity in individuals over 65 are arthritis which affects 50 percent of the elderly, hypertension which affects 39 percent, hearing impairment which affects 30 percent and heart disease which affects 26 percent. More than 80 percent of the over-65 population have at least one chronic condition and many have multiple conditions.

Common conditions of the elderly include:

- *Arthritis:* A variety of types of inflammations and degenerative changes of bones and joints, resulting in limited functioning.

- *Hypertension:* (high blood pressure): While blood pressure often increases somewhat with age, significant elevations pose a serious health problem. They can damage the heart, lungs and kidneys and contribute to the development of heart disease.

- *Stroke:* (cerebrovascular accident): A blockage of blood from the brain. The severity depends on the particular areas and amount of brain tissue involved.

- *Congestive Heart Failure:* A set of symptoms related to the impaired pumping performance of the heart. The result is that one or more chambers of the heart do not empty adequately during the heart's contractions.

- *Parkinson's Disease*: A neurological disease that results in tremors, rigidity, lack of expression and difficulty walking.

- *Diabetes mellitus* (sugar diabetes): A disease associated with deficient insulin secretion leading to excess sugar in the blood and urine. This type of diabetes begins in adulthood and develops slowly. It occurs most frequently in obese elderly. The retinas of the eyes are often affected.

Other Physical and Emotional Problems Associated with Aging

The elderly are also more prone to a number of conditions that are non-disease-related, including:

- *Fractures and Falls*: Unlike younger individuals, the elderly often sustain fractures without direct trauma. The majority of fractures are caused by falls occurring in the home. While fractures may result from the direct impact of hitting the ground in a fall, they may also result from the forces of muscles exerted against bone. Falls may occur as a result of older people's diminished "righting reflexes." This is the body's ability to instinctively adapt to changes in the environment, such as inclines, by bending, turning, shifting weight, etc. With diminished righting reflexes, the elderly may trip or stumble easily and recover clumsily. The contracting of muscles to recover balance plays a role in fractures. The elderly may fall as a result of tripping or stumbling on floor material inside the home or on irregular pavement outside the home. Poor illumination, poor vision, confusion and distraction all contribute to the risk of falling.

- *Incontinency:* Inability to control the flow of urine (urinary incontinency) or fecal matter (fecal incontinency). Incontinency is extremely disabling and a major source of stress for the elderly and their caregivers. It also increases the chances that an older person will be placed in an institution. Fecal incontinency is almost entirely preventable with proper diagnosis and treatment.

- *Decubiti* (also called bedsores, pressure sores, or pressure ulcers): Skin breakdowns that result from immobility. While they can be contracted by persons of any age, it is more common among the elderly.

- *Dehydration*: Loss of pure water or loss of salt and water together. The elderly are at risk of dehydration as a result of diminished thirst sensation, immobility, or mechanical difficulties in swallowing. It can be recognized by lack of skin elasticity, dry skin and confusion.

- *Depression*: Depression is the most frequently diagnosed form of psychopathology among the elderly. While women are more likely to report depression in middle age and early old age, men are more likely to suffer from clinically diagnosable depression at the age of 80 or above. Depression may be manifested in response to stressful life events.

- *Alcoholism and Drug Abuse*: While it is difficult to obtain accurate statistics on the prevalence of alcoholism in the elderly population, because of the stigma associated with it, the problem is believed to be widespread. While most elderly alcoholics contract the condition earlier in their lives, approximately one-third increase their drinking in advanced age in response to age-related issues. The misuse of prescription drugs is also a problem among the elderly. This includes sharing drugs or not adhering to recommended doses.

Functional Ability

Functional ability, or capacity, refers to a person's ability to carry out daily activities. These range from getting out of bed in the morning to signing legal documents.

Those who work with the elderly are trained to carefully assess the impact of biological, medical and psychological changes on the older person's ability to manage in the community. Having a clear understanding of the older person's abilities and impairments enables them to determine when the older person needs assistance and what type of level of assistance is needed.

Professionals who work with the elderly use a variety of assessment tools to determine a person's functional capacity (his or her ability to perform certain tasks). These include mental status exams to measure cognitive status and scales that measure the ability to carry out daily tasks (called "activities of daily living [ADL]" scales).

In the past, older people who were having trouble managing independently were branded as "incompetent" and relieved of responsibilities. Some were unfairly deprived of civil liberties while many suffered from a loss of self-esteem and dignity. In recent years, a more enlightened attitude toward disability and impairment has prevailed.

Communicating with Older Persons with Disabilities

Because many older people have communication impairments, it is essential for those who work with the elderly to develop skills that will optimize their effectiveness in interviewing victims, witnesses and suspects.

Hearing –Impaired Persons

Many older people have a partial hearing loss. This means that they can hear some sounds but not others. Most of the elderly with hearing loss do not learn sign language. Rather, they depend on lip reading and hearing aids or other electronic devices to assist them.

There are numerous methods and devices for assisting individuals who have hearing disabilities with communication. Some communities have agencies or associations (e.g., hearing societies or independent living resource centers) that can lend out special equipment or provide assistance with interviews.

Most people with hearing impairments compensate for the loss by paying more attention to visual cues. For that reason, it is important that they can clearly see the speaker's lips, facial expressions and hands.

Effective Communication with Hearing Impaired Adults

- Ask the person if he or she would prefer to use written communication or a sign language interpreter
- Arrange the room where communication will take place so that no speaker and listener are more than six feet apart and all are completely visible
- Concentrate light (but be sure it is not glaring), on the speaker's face for greater visibility of lip movements, facial expressions and gestures
- Position yourself directly in front of the person to whom you are speaking
- Do not stand in front of a light source (such as a window)
- Speak to the hearing-impaired person from a distance of no more than six feet, but no less than three feet
- To get the person's attention, use a light touch on the arm or shoulder
- Establish eye contact before you begin to speak
- Speak slightly louder than you normally would
- Speak clearly at your normal rate, but not too quickly
- Use short, simple sentences. Keep language concrete

- Eliminate as much background noise as possible
- Never speak directly into the person's ear
- If the person does not appear to understand what is being said, rephrase the statement, rather than just repeating the same words
- Do not over-articulate. Over-articulation distorts both the sound of speech and the face, making visual clues more difficult to understand
- Include the person in all discussions about him or her
- Avoid smoking, chewing gum or covering your mouth while you speak
- Repeat key words and phrases. Ask the listener to repeat what you have said
- If you cannot understand the person's answer to your question, ask him or her to repeat or rephrase the response
- Use open-ended questions, not questions requiring a "yes" or "no" answer
- Use visual aids whenever possible – drawings, diagrams, etc.
- Watch for signs of fatigue in your listener

When using written communication, remember the following:

- Keep your message short and simple
- Use short words and phrases
- Face the person after you have written your message
- Use visual aids

- Always treat the elderly person with dignity and respect
- Avoid a condescending tone

THE AGING SERVICES NETWORK

The successful resolution of elder abuse cases often depends on close

collaboration and effective coordination between law enforcement agencies and those that provide health and social services. In South Carolina, law enforcement agencies are mandated to cross-report elder abuse with other agencies to ensure that victim's needs are addressed while efforts are made to stop the abuse.

Included in the service network are mental health agencies, crisis intervention programs, victim service agencies, family support service agencies, programs for developmentally disabled persons, volunteer organizations and many others. To establish good working relationships, it is essential that everyone involved have a basic understanding of the functions, mandates, methods and outlooks of the other "key players".

Many older people call police departments or sheriff's offices for advice or information about services that may be available from other agencies. It is important, therefore, for law enforcement officers to be familiar with the wide range of health and social services providers in their communities. Making effective referrals can prevent abuse, improve the quality of an older person's life, boost the department's image and reduce the number of inappropriate calls for service that police receive.

Community Resources

The agencies with which law enforcement is most likely to interact in abuse cases are Adult Protective Services and Long-Term Care Ombudsman programs. Many state laws, including South Carolina, require these agencies to cross-report abuse or conduct collaborative abuse investigations.

Adult Protective Services (APS)

Federal and state laws and regulations determine the scope and responsibilities of APS. Generally, this program serves as the gatekeeper for vulnerable or at-risk adults (i.e., those who have mental or physical disabilities that make them particularly susceptible to abuse, neglect, or exploitation). APS is authorized to:

- Receive reports or referrals. APS provides 24-hour coverage when LEA/EMS need assistance.

- Conduct assessments. The period of time in which APS is required to respond to reports and referrals varies by state. Initial intake requires an assessment. The assessment is intended to determine the degree to which the victim is aware of risks and capable of acting on his or her own behalf. It may take several weeks to thoroughly review situations, find out what is happening and determine whether or not the allegations are true. APS workers may seek law enforcement's assistance in conducting interviews in threatening situations.

- Develop service plans. APS suggests services or actions to stop abuse and eliminate future risk. This involves close coordination with other community agencies.

The competent older person always has the option to refuse APS services or interventions.

APS caseworkers must sometimes close cases in which the competent older person refuses services. In dangerous or life-threatening situations, however, APS may be authorized to initiate legal means for providing services on an involuntary basis if competency, individual safety or community safety are in question. All APS caseworkers function under strict confidentiality rules. South Carolina, however, permits APS to share information with law enforcement and other investigative entities such as the Solicitor.

The majority of situations reported to APS involve self-neglect. These situations evolve when an impaired older person fails to provide for his or her own care or to permit others to do so. The person may be living in a squalid environment or may neglect his or her personal health, hygiene, or safety. In these cases, APS may provide assistance with the impaired person's consent. They may also intervene if the person's immediate safety is a serious risk and he or she is incapable of acting on his or her own behalf. If the situation is not an emergency and the person understands the risks, APS respects his or her right to make decisions about how to live. At times, APS workers are under pressure from third parties who believe that APS "ought to do something" about these situations. APS workers often find themselves in the position of defending competent individuals' right to make their own decisions. In cases of immediate danger law enforcement can take a vulnerable adult (elder) into emergency protective custody without their consent or a court order. In these situations, APS will then assume legal custody pending a court hearing within 72 hours.

Long-Term Care Ombudsman

Ombudsman programs are federally mandated to protect the health, safety, welfare and rights of older persons who reside in long-term care facilities, such as nursing homes and residential care (board and care) homes. In South Carolina the ombudsman program investigates complaints about the quality of services provided and cases of abuse, neglect, or exploitation. Ombudsmen may work closely with APS or law enforcement agencies in these cases.

Area Agencies on Aging

Area agencies on aging (sometimes referred to as "triple A's") provide services and advocacy for older people in the county or multi-county area. Under the supervision of state units on aging, AAAs receive federal, state and local funds to provide a vast array of services. Formal plans are developed by AAAs with the advice of community agencies and older people. AAAs are required to target

services to seniors who have the greatest social and economic needs

Financial Management

Financial exploitation frequently occurs when elderly or dependent adults voluntarily give authority to untrustworthy individuals, or they may be coerced or tricked into signing away homes or property. An effective way to guard against this type of abuse is to arrange for trustworthy individuals or agencies to provide financial management.

Financial management may be informal, where a trusted individual simply helps the older person pay bills or transact business, or it may be formal, where a respected community service provider offers bill-paying help as a support service with due safeguards and quality assurances. It may also involve legal transfers of authority such as a representative payeeship, power of attorney or conservatorship.

- Representative Payeeship: This is the assignment of authority to someone to receive, sign and cash another person's public benefits check. The representative payee (often referred to as the "rep payee") is then responsible for helping the person manage his or her finances. Representative payeeships may be arranged for government benefits including Social Security, veteran's benefits and civil service annuities. Persons with mental or physical disabilities or substance abuse problems that prevent them from managing their money responsibly may benefit from this device.

Representative payeeships may be set up after the onset of incapacity and may be appropriate for clients of moderate means. They do present some risks, however and should be used cautiously. There are minimal accounting requirements and few safeguards, although Social Security can require an accounting from the rep payee and investigate allegations of fund misuse.

- Power of Attorney: A power of attorney (POA) allows an individual (called the "principal") to delegate certain stated powers to someone else who is then called the "attorney-in-fact". The power of attorney specifies exactly what legal and/or financial responsibilities are being transferred. To be valid, the POA must be enacted while the principal is still mentally competent. It may be revoked at any time and is valid only for as long as the principal continues to have capacity. A durable power of attorney differs from the standard power of attorney in that it is not affected by any subsequent incapacity of the principal. If the person who gave the durable power of attorney later becomes incapacitated, the power of attorney survives until the death of the principal.

- Guardianship or Conservatorship of Property: Guardianship or conservatorship (the terms vary by state) are mechanisms whereby probate courts grant individuals or groups certain powers to control the

affairs of people who are incapable of managing their own. They are usually separated into “guardianship” and “conservatorship”. Guardians manage an individual’s personal affairs (such as where he or she is going to live), while conservators manage an individual’s finances. A conservator may be an institution, a relative, a friend, or a local public guardian. Public guardians are public officials who are charged as conservators/guardians of last resort (when there is nobody else available or the client is indigent). Some states do not offer this service.

The Role of Law Enforcement in Elder Abuse Cases

In general terms, law enforcement’s role is to protect victims, investigate crimes, prevent and stop abuse and exploitation, enforce the law, arrest offenders and provide referrals to other agencies/resources that can address non-police-related needs that must be met. Law enforcement officers often work in concert with social service providers, like APS, to perform these functions as effectively as possible.

Relevant South Carolina Law

SECTION 43-35-10 Definitions

"Abuse" means physical abuse or psychological abuse.

"Exploitation" means:

(a) causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;

(b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or

(c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.

- "Investigative entity" means the Long Term Care Ombudsman Program or the Adult Protective Services Program.

  "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death

- "Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or

physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

"Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

"Psychological abuse" means deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

"Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

43-35-15. LONG TERM CARE OMBUDSMAN PROGRAM; ADULT PROTECTIVE SERVICES PROGRAM; RESPONSIBILITIES

(A) The Long Term Care Ombudsman Program shall investigate or cause to be investigated reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations.

(B) The Adult Protective Services Program shall investigate or cause to be investigated reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in all settings other than facilities and where appropriate, provide protective services. The Adult Protective Services Program may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services.

SECTION 43-35-25. Persons required to report abuse, neglect, or exploitation of adult; reporting methods.[SC ST SEC 43-35-25]

(A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or mental retardation specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited shall report the incident in accordance with this section.

(B) Except as provided in subsection (A), any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved by the investigative entity to which the report is to be made.

(D) A person required to report under this section must report the incident within twenty-four hours or the next business day. A report must be made in writing or orally by telephone or otherwise to the Long Term Care Ombudsman Program for incidents occurring in facilities and to the Adult Protective Services Program for incidents occurring in all other settings. In the event an investigative entity receives a report which is not within its investigative jurisdiction, it shall forward the report to the appropriate entity not later than the next business day.

(E) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(F) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person from also reporting directly to law enforcement, and in cases of an emergency, law enforcement must also be contacted.

SECTION 43-35-40. Initiation of investigation; reports to law enforcement. [SC ST SEC 43-35-40]

Upon receiving a report the investigative entity promptly shall initiate an investigation and within two business days of receiving the report must review the report for the purpose of reporting to law enforcement those cases requiring involvement of law enforcement. A report to law enforcement must be made within one business day of completing the review. The law enforcement agency shall initiate an incident report and provide upon request a copy to an entity conducting an investigation pursuant to this chapter or any other provision of state or federal

law.

43-35-55. PROTECTIVE CUSTODY BY LAW ENFORCEMENT OFFICER

(A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:

(1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;
(2) the vulnerable adult or caregiver does not consent to protective custody; and
(3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety that must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult who is taken into protective custody by a law enforcement officer may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

(1) the name of the vulnerable adult, if known, or a physical description of the adult, if the name is unknown;
(2) the address of the place from which the vulnerable adult was removed by the officer;
(3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult at the time the adult was taken into protective custody;
(4) the address of the place to which the vulnerable adult was transported by the officer;
(5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

SECTION 43-35-85. Penalties. [SC ST SEC 43-35-85]

(A) A person required to report under this chapter who has actual knowledge that abuse, neglect, or exploitation has occurred and who knowingly and willfully fails to report the abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year. A person required to report under this chapter who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and willfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and willfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and willfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and willfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and willfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned

not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who willfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.